

EXHIBIT "A" FINAL ORDER
STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
FILED BY COONEY BROTHERS,
APPLICATION NO. 23-s40A

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

The proposed Findings of Fact and Conclusions of Law in this matter entered June 10, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

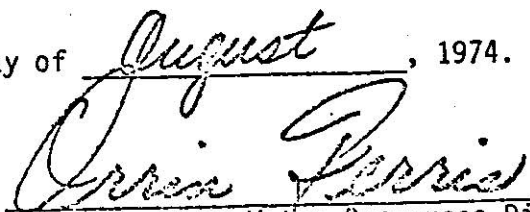
ORDER

1. The applicant's permit is granted allowing the appropriation of 91 acre-feet per annum of water from Fish Creek to be diverted at the points more fully described in paragraph 1 of the Proposed Findings of Fact, said water to be diverted in Sweet Grass County and Wheatland County, Montana, and used for irrigation, stock-watering, and fish purposes.

2. The applicant shall construct adequate diversion facilities that will allow water to flow freely downstream to prior water-right holders, and that will prohibit more water than necessary to satisfy applicant's entitlement under this permit from entering the applicant's appropriation system.

3. The permit is granted subject to existing rights.

Done this 19th day of August, 1974.


Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

CASE # 23

BEFORE THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE)
APPLICATION OF COONEY)
BROTHERS 23-s40A)

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pursuant to the provisions of the Montana Water Use Act, section 89-865 et seq., R.C.M. 1947, after due notice, a public hearing was held May 28, 1974, at the Wheatland County Courthouse, Harlowton, Montana. The objectors did not appear. The applicant did appear and offered testimony by Mr. William Cooney. Mr. Gene Tabor also testified for the applicant.

PROPOSED FINDINGS OF FACT

1. On July 20, 1973, Cooney Brothers, by Robert H. Cooney, duly filed with the Department of Natural Resources and Conservation, Water Resources Division, an application for beneficial water use permit to appropriate 91 acre-feet per annum of water in Sweet Grass County, Montana. The water is to be diverted from Fish Creek, a tributary of the Musselshell River, at the following four points: No. 1, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, Township 5 North, Range 14 East; No. 2, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, Township 6 North, Range 14 East; No. 3, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 6 North, Range 15 East; and No. 4, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, Township 6 North, Range 16 East, M.P.M.; and to be impounded in a 91-acre-foot reservoir on said creek, at a point in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 10, Township 5 North, Range 14 East, M.P.M., and used for a fish pond and stock-watering purposes from January 1 to December 31, inclusive, of each year, and for irrigation purposes from May 1 to December 1, inclusive, of each year, on the following described property: 23 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$, 76 acres in the NW $\frac{1}{4}$, and 6 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; 14 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 39 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3; 11 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10; all in Township 5 North, Range 14 East, M.P.M., Sweet Grass County; and 20 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28; 2 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34; 5 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35; all in Township 6 North, Range 15 East, M.P.M., Wheatland County, and 9 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, 12 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19; 30 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$, 58 acres in the NW $\frac{1}{4}$, 29 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$, 20 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20; 61 acres in the N $\frac{1}{2}$, 8 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21; all in Township 6 North, Range 16 East, M.P.M., Wheatland County; and used for supplemental water in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 23 on 30 acres; 31 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 25; 46 acres in the NE $\frac{1}{4}$, 15 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$, 10 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$, 91 acres in the SW $\frac{1}{4}$ of Section 26; 19 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27; 25 acres in the SW $\frac{1}{4}$, 20 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28; 52 acres in the SW $\frac{1}{4}$,

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34 acres in the S½ SE¼ of Section 29; 31 acres in the S½ SE¼ of Section 30; 2 acres in the NE¼ NE¼ of Section 32; 37 acres in the N½ NE¼ of Section 34; 41 acres in the N½ NW¼ of Section 35; all in Township 6 North, Range 15 East, M.P.M., Wheatland County, and containing a total of 907 acres, more or less.

2. Objections to the application were filed by Henry E. and Lloyd J. Berg of Shawmut, Montana, and Mabel Edson of Manhattan, Montana.

3. The applicants' diverting works consist of a water storage reservoir. The water is to be used for irrigation, stockwater and fish purposes.

4. It appears that there are waters available in the source of supply; that the rights of prior appropriators will not be adversely affected; that the proposed means of diversion is adequate; that the proposed use of water is a beneficial use; and, that the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

From the foregoing proposed findings of fact the following proposed conclusions of law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Fish Creek for a beneficial use is required.

2. The criteria for issuance of a permit set forth at Section 89-885, R.C.M. 1947, have been met.

3. The application for beneficial water use permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

Based on the above proposed findings of fact and conclusions of law, the following order is proposed:

PROPOSED ORDER

1. The applicants permit is granted allowing the appropriation of 91 acre-feet per annum of water from Fish Creek to be diverted at the points more fully described in paragraph 1 of the above Proposed Findings of Fact, said water to be diverted in Sweet Grass County and Wheatland County, Montana, and used for irrigation, stockwater and fish purposes.

2. The permit is granted subject to existing rights.

10. It shall be the responsibility of the Permittee to immediately cease diverting water pursuant to these Provisional Permits when there is insufficient water in the Little Bitterroot River to satisfy the prior rights of the Objectors.

Recommendation

The Department recommends that all parties in this matter properly install and maintain adequate measuring devices to fit their particular individual situation where practical and keep a log of records of water used for proof of their water rights.

Done this 7th day of July, 1977.

Orvin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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